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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 DAVID MUNGAI NJENGA,

12 Plaintiff,

13 v.

14 WARDEN WIGGINS, *et al.*,

15 Defendants.  
16

CASE NO. C09-5108RJB

ORDER DIRECTING PLAINTIFF  
TO PROVIDE DOCUMENTS  
AND DIRECTING SERVICE BY  
UNITED STATES MARSHAL

17 Plaintiff has been granted leave to proceed *in forma pauperis*. The court has reviewed  
18 the record and the Complaint. The court finds it is appropriate for the U.S. Marshal to conduct  
19 service in this matter. **However, the clerk's office has noted that Plaintiff has failed to**  
20 **provide all the marshals forms and/or copies of the Complaint for each defendant to**  
21 **properly effect service in this matter. Accordingly, Plaintiff shall submit the necessary**  
22 **forms by no later than May 15, 2009, otherwise the court will recommend dismissal of this**  
23 **matter for lack of prosecution.**  
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25 Upon receipt of the documentation, service of the complaint shall proceed as directed  
26 below:

1           (1)    Service by United States Marshal.

2           It is hereby ORDERED that the United States Marshal shall send the following to each  
3 named defendant by first class mail: a copy of the Complaint and of this Order, two copies of the  
4 Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of service of  
5 Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of  
6 service shall be advanced by the United States. The Clerk shall assemble the necessary  
7 documents to effect service.  
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9           (2)    Response Required

10          Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of  
11 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**  
12 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a  
13 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil  
14 Procedure.  
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16          Any defendant who fails to timely return the signed Waiver will be personally served  
17 with a summons and complaint, and may be required to pay the full costs of such service,  
18 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or  
19 motion permitted under Rule 12 within **thirty (30) days** after service.  
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21          (3)    Filing and Service by Parties, Generally.

22          All original documents and papers submitted for consideration by the court in this case,  
23 and a duplicate of all such papers, are to be filed with the Clerk of this court. The originals and  
24 copies of all such papers shall indicate in the upper right-hand corner the name of the Magistrate  
25 Judge to whom the copies are to be delivered. The papers shall be accompanied by proof that  
26 such documents have been served upon counsel for the opposing party (or upon any party acting

1 *pro se*). The proof shall show the day and manner of service and may be written  
2 acknowledgment of service, by certificate of a member of the bar of this court, or by affidavit of  
3 the person who served the papers.

4 (4) Motions.

5 Any request for court action shall be set forth in a motion, properly filed and served. A  
6 party must file and serve with the motion a supporting memorandum. The motion shall include  
7 in its caption (immediately below the title of the motion) a designation of the Friday upon which  
8 the motion is to be noted upon the court's calendar. That date shall be the third Friday following  
9 filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs and affidavits  
10 in opposition to any motion shall be filed and served not later than 4:30 p.m. on the Monday  
11 immediately preceding the Friday appointed for consideration of the motion. If a party fails to  
12 file and serve timely opposition to a motion, the court may deem any opposition to be without  
13 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday  
14 immediately preceding the Friday designated for consideration of the motion, a response to the  
15 opposing party's briefs and affidavits.

16 (5) Motions for Summary Judgment

17 If one of the parties files a motion for summary judgment pursuant to Federal Rules of  
18 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56  
19 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for  
20 summary judgment if the moving party has shown the absence of issues of material fact and an  
21 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere  
22 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary  
23 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific  
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1 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary  
2 judgment motion or to present counter evidence could result in the Court accepting the moving  
3 party's evidence as the truth, and entering final judgment in favor of the moving party without a  
4 full trial. Rand v. Rowland, 113 F.3d 1520 (9<sup>th</sup> Cir. 1997).

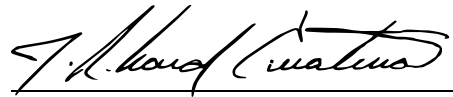
5 (6) Direct Communications with District Judge or Magistrate Judge

6 No direct communication is to take place with the District Judge or Magistrate Judge with  
7 regard to this case. All relevant information and papers are to be directed to the Clerk.  
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9 (7) Clerk's Action

10 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
11 Magistrate Judges to plaintiff.

12 DATED this 14<sup>th</sup> day of April, 2009.

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15 J. Richard Creatura  
16 United States Magistrate Judge  
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